

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

DAVID R.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL  
CENTER,

Service Agency.

OAH No. 2011100936

**DECISION**

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on November 30, 2011.

The Service Agency, Alta California Regional Center (ACRC), was represented by Herman Kothe, Supervising Counselor and Hearing Designee.

Claimant was represented by his mother.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

**ISSUES**

Is ACRC required to fund a day program for claimant?

## FACTUAL FINDINGS

1. Claimant is a 20-year-old young man eligible for ACRC services based on a diagnosis of mild mental retardation. He also has a diagnosis of Oppositional Defiant Disorder and a history of Conduct Disorder/Antisocial Disorder. Claimant lives in his family home with his mother and sister and has been receiving services from ACRC pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)<sup>1</sup>

2. As indicated in his current Individual Program Plan (IPP), dated May 17, 2011, claimant's long range goals are:

1. [Claimant] will continue to reside with his family.
2. [Claimant] will remain healthy and have access to psychiatric services.
3. [Claimant] will have access to day or vocational training program.

3. At the May 17, 2011 IPP meeting, claimant explained that he is "at home during the day and has nothing to do with his day." It was noted that when he is at home he can get into trouble and he requested a day or work program be made available. The IPP team agreed.

4. On October 12, 2011, ACRC issued a Notice of Proposed Action (NOPA) to claimant, advising that ACRC was "denying your request to fund Day Program services through DDSO." The reason for the action stated:

Pursuant to the Individuals with Disabilities Education Action [sic] (IDEA), it is the responsibility of the local educational agency "LEA" (in your case the school district) to provide a free and appropriate education (FAPE) for all individual, including the provision of special education and related services, which includes transition services for students ages 18 through 22. ACRC has determined that generic resources, including transition services from the local school district, can meet your day, vocational education, work services, independent living, or mobility training and related transportation needs. Further, ACRC is prohibited from funding services which are available from generic agencies, such as the school districts, when a consumer is eligible for such services but chooses not to pursue those services. And ACRC may not supplant the budget of such generic agencies.

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

Additionally, it was determined that you do not qualify for an exemption to Welfare and Institutions Code section 4648.55 as there is no evidence of the existence of an extraordinary circumstance, and because it was determined that generic resources are available to meet your needs.

5. Claimant filed a Fair Hearing Request, dated October 17, 2011, stating:

[Claimant] completed high school in 2009 and has not attended since. For [claimant] to use generic resources, he must re-apply to school, be subjected to a new assessment testing process, to establish eligibility within the generic resource. [Claimant] does not have an existing valid individual education plan (IEP) within any school district.

[Claimant] should not be subjected to a new assessment testing process for the purpose of establishing eligibility within a generic resource that he is no longer qualified with since he does not have an active IEP. [Claimant] needs to be placed in a day program that is thru Alta since he is already eligible through their assessment testing and active IPP.

6. Prior to issuance of the NOPA, the parties were actively discussing claimant's interest in day program services. At a meeting on August 11, 2011, it was "determined that claimant required Work Ability experience, as well as education and training to assist [him] in gaining independent living skills." At that meeting, the planning team determined that claimant's needs could be provided by the local school district. It was agreed that claimant would enroll in Sacramento City Unified School District (SCUSD) and request transition services.

7. Claimant left SCUSD in 2009. His Individualized Education Program (IEP) dated April 27, 2009, states, "[claimant] is currently in a non public setting. The IEP team and parent agree that [claimant] is ready to transition out of school and look for employment." He was then exited from the school setting and the IEP noted that he "graduated with a Certificate of Achievement/Completion."

8. Claimant's mother testified that claimant was willing to re-enroll at SCUSD to receive services, until it was determined that he would have to undergo an assessment process. She was concerned that he would be required to participate in extensive testing to determine if he would qualify for services since he did not have an active IEP and had been removed from the district for two years. She believes that he should not be subjected to that process and should instead receive services from ACRC. She testified that claimant is "not interested in going through the assessment process."

The actual burden of the assessment process was unknown at hearing. When claimant discovered that an “assessment process” was required to obtain services, he chose not to pursue services through the LEA at that time.

9. Rob Franco is an ACRC Supervising Counselor. He testified that the local education agency is responsible for providing a free and appropriate public education (FAPE), including transition services, to qualified students between the ages of 18 through 22. The regional center is mandated to first utilize natural and generic resources to meet a consumer’s needs, prior to funding a service or support.

Mr. Franco also testified that the 2011 enactment of section 4648.55, subdivision (a) (A.B.104, Chapter 37, Statutes of 2011) would further prevent FNRC from funding this service for claimant.

Section 4648.55, subdivision (a), provides:

- (a) A regional center shall not purchase day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18 to 22 years of age, inclusive, if that consumer is eligible for special education and related education services ***and has not received a diploma or certificate of completion***, unless the individual program plan (IPP) planning team determines that the consumer’s needs cannot be met in the educational system or grants an exemption pursuant to subdivision (d). If the planning team determines that generic services can meet the consumer’s day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center shall assist the consumer in accessing those services. To ensure that consumers receive appropriate educational services and an effective transition from services provided by educational agencies to services provided by regional centers, the regional center service coordinator, at the request of the consumer or, where appropriate, the consumer’s parent, legal guardian, or conservator, may attend the individualized education program (IEP) planning team meeting.

(Emphasis added.)

Subdivision (d) provides:

An exemption to the provisions of this section may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a). An exemption shall be granted through the IPP process and shall be based on a determination that the generic service is not appropriate to meet the consumer's need. The consumer shall be informed of the exemption and the process for obtaining an exemption.

10. Mr. Franco explained that claimant is eligible for school until age 22. Therefore, ACRC was mandated to deny the request for Day and Work Program Services. This decision was based upon the need for consumers to access generic resources and the education system is a generic resource.

ACRC determined that there was no evidence of extraordinary circumstances or an inability of SCUSD to be able to meet claimant's need, to justify an exemption.

11. Julia Donhost is claimant's ACRC Service Coordinator. She testified that she contacted SCUSD and is aware of three programs they offer that may meet claimant's needs. She acknowledged that the process has been a bit cumbersome but "fully anticipates the district has resources available to meet his needs." She understands that claimant is frustrated that he has to go through the process but is willing to continue to provide assistance in obtaining the necessary services.

12. There was testimony at hearing that section 4648.55 was applicable in this case even though claimant left school with a certificate of completion. ACRC contends that the statute is "poorly worded" and that a student with a certificate of completion remains eligible for services through age 22, where graduation with a diploma precludes continued eligibility. Therefore, ACRC contends that section 4648.55 prevents regional center funding of claimant's day program at this time.

## LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4646, subdivision (a) provides:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

3. Section 4646.4, subdivisions (a)(1) and (2) provide:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

4. Section 4659, subdivision (a)(1), provides:

(a) Except as otherwise provided in subdivision (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

5. Section 4648, subdivision (a)(8), specifies:

In order to achieve the stated objectives of the consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

6. Under the Individual with Disabilities Education Act (IDEA), students are entitled to special education and related services until age twenty-two or until they receive a diploma. The LEA may be required to reopen and revise an IEP for a student who left high school without receiving a diploma, if the student has not reached age twenty-two. (Educ. Code, § 56026.)

A certificate of completion is awarded to a student as an alternative to a diploma. It certifies that a student has satisfactorily completed a prescribed alternative course of study, has met goals of his IEP, or has participated in high school instruction and has met the objectives of the statement of transition services. A certificate of completion is not a diploma and does not preclude a student from seeking appropriate services until age twenty-two. (Educ. Code, §§ 56026.1 and 56390.)

7. ACRC incorrectly applied the requirements of section 4648.55 to this matter as that section specifically applies to “consumers between the ages of 18 to 22 who are eligible for special education and related services and have *not* received a diploma or certificate of completion.” (Emphasis added).

However, the local education agency remains responsible for providing educational and related services to claimant, as set forth in applicable sections of the California Education Code (Legal Conclusion 6). Claimant did not demonstrate that he has exhausted this resource and ACRC is required to pursue the generic resource before considering funding Claimant's need. Claimant's service coordinator remains available to offer assistance with this process.

## ORDER

The appeal of claimant David R. seeking ACRC funding of a day program is denied.

DATED: December 14, 2011

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SUSAN H. HOLLINGSHEAD  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**